

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSEPH MICHAEL DEVON ENGEL,

Plaintiff,

v.

MISSOURI DEPARTMENT OF
CORRECTIONS and EASTERN
RECEPTION, DIAGNOSTIC AND
CORRECTIONAL CENTER,

Defendants.

No. 4:20-cv-1693-DDN

MEMORANDUM AND ORDER

This matter is before the Court upon review of a civil complaint filed by Missouri State prisoner Joseph Michael Devon Engel, registration number 1069055. For the reasons explained below, the Court will allow plaintiff to proceed *in forma pauperis* in this action, and will dismiss the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly

payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

When plaintiff initiated this action, he did not file a separate motion for leave to proceed *in forma pauperis*. However, in the complaint, plaintiff asks the Court to order the defendants to pay the filing fees for this action, as he only receives \$5.00 per month. Liberally construed, plaintiff can be understood to ask the Court to grant him leave to proceed *in forma pauperis*. The Court will grant plaintiff such leave, and will assess an initial partial filing fee of \$1.00, an amount that is reasonable based upon the information before the Court. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997).

Legal Standard

According to 28 U.S.C. § 1915(e)(2), this Court shall dismiss a complaint at any time if, *inter alia*, it is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action is malicious when it is undertaken for the purpose of harassing or disparaging the named defendants rather than vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff’d* 826 F.2d 1061 (4th Cir. 1987). An action can also be considered malicious if it is part of a longstanding pattern of abusive and repetitious lawsuits, or contains disrespectful or abusive language. *In re Tyler*, 839 F.2d 1290, 1293 (8th Cir. 1988) (per curiam). *See Cochran v. Morris*, 73 F.3d 1310, 1316 (4th Cir. 1996) (when determining whether an action is malicious, the Court need not consider only the complaint before it, but may consider the plaintiff’s other litigious conduct).

An action fails to state a claim upon which relief may be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*,

550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts, but need not accept as true “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that “if the essence of an allegation is discernible,” the court should “construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even *pro se* complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules so as to excuse mistakes by those who proceed without counsel. *See McNeil v. United States*, 508 U.S. 106, 113 (1993).

The Complaint

In the complaint, plaintiff indicates he is a civilly committed detainee. However, review of publicly-available Missouri Department of Corrections (“MDOC”) records shows he is actually a convicted and sentenced state prisoner. Plaintiff filed the complaint pursuant to 42 U.S.C. § 1983 against the MDOC and the Eastern Reception, Diagnostic and Correctional Center (“ERDCC”).

In setting forth his statement of claim, plaintiff writes: “I am still[] being denied my religious [material] and religious diet I am an Astru/Odinism/Catholicism I’m a sourvin citizn [*sic*]

they [expletive] on my religion.” (ECF No. 1 at 3). Plaintiff further avers he shares a cell with another inmate, and there is no distress button in their cell to use in case of emergency. Plaintiff describes his injuries as “mental, [physical], religious, [spiritual], mind raping.” *Id.* at 4.

Plaintiff seeks monetary relief in the amount of one trillion dollars. Plaintiff can also be understood to seek additional monetary relief in amounts ranging from 300 billion dollars to 24 trillion dollars from other individuals identified by generic titles such as “CO1,” “CO2,” “Major,” “Caseworker,” and “Asst. Director.” Plaintiff further seeks to be awarded stocks in various banks and companies, and he appears to seek awards of monetary relief on behalf of other individuals.

The complaint is one of more than one hundred and thirty (130) similar complaints plaintiff has filed in this Court since September of 2020, alleging that his civil rights have been violated by the MDOC and its facilities, and by Missouri State officials. The nature of those complaints is roughly the same as the instant complaint. To date, the complaints that have been reviewed pursuant to 28 U.S.C. § 1915(e)(2) have been dismissed for reasons articulated therein, or because plaintiff failed to comply with court orders. As of December 21, 2020, plaintiff is subject to 28 U.S.C. § 1915(g).

Discussion

Having carefully reviewed and liberally construed the complaint, the Court has determined that this action must be dismissed. While it appears plaintiff seeks relief because he believes he was wrongfully denied accommodations related to his religious needs, he offers no factual assertions related to any such claim. Instead, he offers only the “[t]hreadbare recital” of some elements thereof, supported by his own conclusory statements, which is insufficient to state a plausible claim for relief. *Iqbal*, 550 U.S. at 678. Plaintiff prepared the complaint using this Court’s prisoner civil rights complaint form, which explains the necessity of including facts in

support of the claims alleged, and the importance of stating what each named defendant did or failed to do to cause harm. This Court will not assume facts that are not alleged. *See Stone*, 364 F.3d at 914-15.

Additionally, plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983 against the MDOC and against the ERDCC, a MDOC facility. A suit against the MDOC or one of its facilities is effectively a suit against the State of Missouri. “Section 1983 provides for an action against a ‘person’ for a violation, under color of law, of another’s civil rights.” *McLean v. Gordon*, 548 F.3d 613, 618 (8th Cir. 2008). *See Deretich v. Office of Admin. Hearings*, 798 F.2d 1147, 1154 (8th Cir. 1986) (“Section 1983 provides a cause of action against ‘person[s]’ only.”). However, the State of Missouri and its agencies are not “persons” within the meaning of § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989), *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1010 (8th Cir. 1999). Because plaintiff is missing an essential element of a § 1983 action, his claims against the MDOC and the ERDCC must be dismissed.

Additionally, the MDOC and the ERDCC are protected by the doctrine of sovereign immunity. “The Eleventh Amendment protects States and their arms and instrumentalities from suit in federal court.” *Webb v. City of Maplewood*, 889 F.3d 483, 485 (8th Cir. 2018). *See also Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 618-19 (8th Cir. 1995) (“Generally, in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment”). The Eleventh Amendment bars suit against a state or its agencies for any kind of relief, not merely monetary damages. *Monroe v. Arkansas State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007) (stating that district court erred in allowing the plaintiff to proceed against state university for injunctive relief, and remanding matter to district court for dismissal).

There are two “well-established exceptions” to Eleventh Amendment immunity. *Barnes v. State of Missouri*, 960 F.2d 63, 64 (8th Cir. 1992). The first is “where Congress has statutorily abrogated such immunity by ‘clear and unmistakable language.’” *Id.* The second is where a state has “waived its immunity to suit in federal court, but ‘only where stated by the most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction.’” *Id.* at 65. Neither exception applies here.

The first exception is inapplicable because the Supreme Court has determined that § 1983 does not abrogate a state’s Eleventh Amendment immunity from suit in federal court. *Will*, 491 U.S. at 66 (“We cannot conclude that § 1983 was intended to disregard the well-established immunity of a State from being sued without its consent”); *see also Quern v. Jordan*, 440 U.S. 332, 341 (1979) (“[W]e simply are unwilling to believe. . . that Congress intended by the general language of § 1983 to override the traditional sovereign immunity of the States”). The second exception is inapplicable because the State of Missouri has not waived its sovereign immunity in this type of case. *See* Mo. Rev. Stat. § 537.600 (explaining that sovereign immunity is in effect and providing exceptions). Accordingly, plaintiff’s claims against the MDOC and the ERCC must be dismissed.

Plaintiff has also indicated an intent to recover monetary relief from numerous individuals identified by generic titles. However, the only allegations specific to each individual are the amounts of money plaintiff seeks to recover. Simply listing a person’s name or title is insufficient to state a claim against him or her. *See Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) (“Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given pro se complaints”).

Additionally, there are no specific allegations to permit the unknown individuals to be identified following reasonable discovery. This action therefore cannot proceed against them. *See Estate of Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995) (suit naming “various other John Does to be named when identified” not permissible).

Finally, it appears this action is subject to dismissal because it is malicious. As noted above, this action is one of over one hundred and thirty (130) duplicative and meritless actions plaintiff has recently filed in this Court against the MDOC and its facilities, and against individuals identified by many of the generic titles that appear in the instant complaint. Plaintiff submitted the pleadings in bulk, and specified he intended each set of pleadings to be docketed as an individual civil action. It is therefore apparent that plaintiff initiated this action as part of a campaign of harassment through repetitive lawsuits, not with the intent of vindicating a cognizable right. *See In re Billy Roy Tyler*, 839 F.2d 1290 (8th Cir. 1988) (noting that an action is malicious when it is a part of a longstanding pattern of abusive and repetitious lawsuits, and also when it contains disrespectful or abusive language); *Spencer*, 656 F. Supp. at 461-63 (an action is malicious when it is undertaken for the purpose of harassing the defendants rather than vindicating a cognizable right); *Cochran*, 73 F.3d at 1316 (when determining whether an action is malicious, the Court need not consider only the complaint before it, but may consider the plaintiff’s other litigious conduct).

For all of the foregoing reasons, the complaint is subject to dismissal. In consideration of plaintiff’s abusive litigation practices and the manner in which he prepared the instant complaint, the Court concludes it would be futile to direct him to file an amended complaint in this action. The Court will therefore dismiss this action at this time pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff may proceed *in forma pauperis* in this action.

IT IS FURTHER ORDERED that plaintiff shall pay an initial filing fee of \$1.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B). A separate order of dismissal will be entered herewith.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 16th day of March, 2021.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE